

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

John Demjanjuk,

Petitioner,

No. 09-3469

Eric H. Holder, Attorney General of  
the United States,

Respondent.

**JOHN DEMJANJUK’S REPLY TO GOVERNMENT’S  
OPPOSITION TO MOTION FOR STAY PENDING REVIEW**

John Demjanjuk, by his undersigned attorneys, hereby replies to the Opposition filed by the government to his Motion for Stay Pending Review. We will address the individual parts of the government's Opposition.<sup>1</sup>

1. Counsel's preliminary statement

As a preliminary statement on this issue, counsel regrets the intemperate nature of the first seven pages of the Government's Opposition to this Motion. That portion of the government's 09-3469 Opposition unfortunately seems directed at arousing a public emotional animus against Mr. Demjanjuk in his litigation

<sup>1</sup> We will refer to the Opposition filed in 09-3416 as the “09-3416 Opposition” and the Opposition filed in this proceeding as the “09-3469 Opposition.”

before the federal courts. It is regrettable that the government sees fit to proceed in such a manner. Counsel is certain that this Court will not be influenced either by the government's attempt to arouse public animus, or by any unfortunate public response that might result.

## 2. General Overview

The government's 09-3469 Opposition fails to put the history of this long litigation into sensible perspective. The government repeatedly calls Mr. Demjanjuk a "Nazi persecutor."<sup>2</sup> It fails, as it has for decades, to acknowledge the entire context of its campaign against him. The equitable calculus required by *Nkem v. Holder*, 556 U.S. \_\_\_, 2009 WL 1065976 (April 22, 2009) at 11, calls for a different approach than the government demands.

This is the government agency (the Office of Special Investigations ("OSI")) that sent Mr. Demjanjuk to stand trial for his life based on fraud. *Demjanjuk v. Petrovsky*, 10 F.3d 338(6th Cir. 1993), *cert. denied sub nom. Rison v. Demjanjuk*, 513 U.S. 914 (1994). While this Court found that the government failed to produce exculpatory materials to Mr. Demjanjuk's *defense*, it did not note the equally true point that the government did not make those same documents

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<sup>2</sup> The government seems to be enamored of the term "Nazi," which it apparently prefers to the more conventional, and more correct, reference to the authors of these atrocities as "German."

available to the Israeli *prosecution*.<sup>3</sup> In Israel, Mr. Demjanjuk was sentenced to hang and sat for seven years in a solitary cell, five of them just a short distance from the yard where a scaffold would be built. His cell had no windows, and he was every day reminded that he would soon be taken from it and executed.

When Mr. Demjanjuk was acquitted by the Israeli Supreme Court, the government attempted to block his return to the United States, even though if he were sent to the Ukraine, the government's spokesperson acknowledged he might well be put to death. We make this statement based on counsel Michael Tiger's recollection of oral argument on August 3, 1993. *Demjanjuk v. Petrovsky*, 1993 WL 394773 (6<sup>th</sup> Cir. 1993) (issuing *habeas corpus cum causa*).

### 3. Malingering

The government contends that Mr. Demjanjuk is malingering. It notes that he can walk a few steps, respond to stimuli, and perform other elementary tasks. None of these considerations contradicts the medical evidence that removal under present conditions and arrest, incarceration and trial in Germany would cause him severe pain and suffering.

#### A. The medical evidence.

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<sup>3</sup> No Department of Justice action was taken against any of the OSI lawyers involved in this affair, nor was any Congressional oversight hearing undertaken, nor was any bar association disciplinary proceeding initiated.

Mr. Demjanjuk has been diagnosed with “severe spinal stenosis.” Attached as Attachment E<sup>4</sup> is a Declaration of John Demjanjuk, Jr. submitting a report of Dr. Paul A. Klatte of an April 21, 2009 MRI examination of Mr. Demjanjuk. Accompanying the report are copies of MRI images of Mr. Demjanjuk’s spine. The report of Dr. Klatte states (emphasis added):

There is a moderate anterolisthesis at the L3-4 level measuring approximately 5.5 mm with mild narrowing of the disc interspace. There is also moderate hypertrophy of the posterior elements *and these factors result in a severe canal stenosis.*

\* \* \*

Impression

Moderate degenerative changes as described, but most notably at the L3-L4 level with a severe canal stenosis.

The first three MRI images submitted with Mr. Demjanjuk Jr.’s Declaration clearly shows the 5.5 mm anterolisthesis (displacement) of the vertebra at L3-L4 -- the narrowing effect of this 5.5 mm displacement on the size of the spinal canal is the resulting “severe canal stenosis.” The next six MRI images show in progressive pattern the narrowing of the spinal canal directly and its impact on the spinal cord. The cause of Mr. Demjanjuk’s pain is obvious from the MRI Report and the MRI images themselves.

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<sup>4</sup> We have continued the numbering of attachments from the last attachment to the Motion for Stay Pending Review.

The fact that Mr. Demjanjuk suffers severe pain when he is moved was also recognized by the government's own doctor. Specifically, Dr. Quinones reported that Mr. Demjanjuk experiences severe pain (9/10) in his right hip joint. The doctor reported that Mr. Demjanjuk's medications include (Medical Report):

Tramadol HCL 50 mg one tablet every 4-6 hours as needed for pain<sup>5</sup>  
Hydrocodone/APAP one tablet every 4-6 hours as needed for pain<sup>6</sup>

After examining Mr. Demjanjuk and after examining laboratory results of blood work the government's own doctor recommended:<sup>7</sup>

1. Provide pain management during transportation with current Ultram regimen.

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<sup>5</sup> Detailed information on Ultram (Tramadol) can be found on the FDA's web site at [http://www.fda.gov/cder/foi/label/2004/20281slr030,21123slr001\\_ultram\\_lbl.pdf](http://www.fda.gov/cder/foi/label/2004/20281slr030,21123slr001_ultram_lbl.pdf). A less detailed description can be found at <http://www.medicinenet.com/tramadol-oral/article.htm>. In either case, Tramadol is prescribed for moderate to severe pain.

<sup>6</sup> Detailed information on Hydrocodone can be found on the FDA's web site at <http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm?fuseaction=SearchDrugDetails>

A less detailed description can be found at <http://www.medicinenet.com/hydrocodoneacetaminophen/article.htm>. In either case Hydrocodone (Vicodin) is prescribed for moderate to moderately severe pain.

<sup>7</sup> The government did not provide to counsel or the Court the laboratory results on which Captain Quinones based his opinion. Captain Quinones clearly had the laboratory results before him as he cites a hemoglobin level of 11.7 and a sodium level of 148 in the body of his report. *See* Attachment H, 4/27/09 E-mail of Eli Rosenbaum to John Broadley refusing to produce the lab test results on which Dr. Quinones relied.

2. Recommend patient transportation to airport via ambulance for comfort and pain management.
3. Patient must flight (*sic*) with seat reclined avoiding prolonged pressure upon his right sacroiliac joint.
4. Allow the patient to stands (*sic*) and mobilized extremities to avoid blood clots formation in lower extremities
5. Provide 2-3 liter of oxygen during transport to prevent hypoxia.

In his Motion for a Stay Pending Review, Mr. Demjanjuk characterized this as a “medical evacuation.” Dr. Quinones clearly concurred with that characterization, recommending that *the patient* (Mr. Demjanjuk) receive pain killers during transportation, be transported by ambulance, travel in a reclined position, that measures be taken to avoid blood clots, and that he be given oxygen during transportation.

B. The video evidence

The government makes much of the fact that Mr. Demjanjuk can walk from a vehicle to a doctor’s office. As the declaration of Mrs. Irene Nishnic makes clear (and as is apparent on some of the government’s videos) this is a “shaky” business.<sup>8</sup> In several cases ICE stopped video taping or did not begin video taping while Mr. Demjanjuk was being helped into or out of a vehicle. Mr. Demjanjuk’s argument has never been that it is impossible to manage him in a way that does not

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<sup>8</sup> The declaration of Mrs. Irene Nishnic is attached as Attachment G.

cause him severe pain.<sup>9</sup> His argument is that, in reality, the enforcement authorities simply do not treat people in Mr. Demjanjuk's position with the necessary degree of care to avoid severe pain and suffering. This is not speculation, this is fact illustrated by Video Clip No. 2.

The totality of the evidence before the Court is overwhelming that Mr. Demjanjuk suffers severe pain from his back condition. Although he is not bed-ridden (and has never claimed to be) his mobility is severely impaired and intermittent, and he suffers moderately severe to severe pain when he moves or is improperly handled. If there is any remaining doubt on this issue in the Court's mind, the sorry history of government conduct in this case counsels against easy acceptance of the government's submissions. Should the Court have remaining doubt, it can easily appoint its own expert as Rule 706 of the Federal Rules of Evidence authorizes. We understand that the Cleveland Clinic stands ready to undertake such an assignment if requested by the Court.

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<sup>9</sup> Two or three emergency medicine technicians from the Seven Hills Fire Department almost certainly could have moved Mr. Demjanjuk from his home and then by ambulance to the Federal Building in Cleveland without causing him severe pain. That is part of their job. ICE, the responsible United States enforcement agency, however, decided to ignore the advice of its own doctor to transport Mr. Demjanjuk by ambulance and sought to move him in a wheel chair and a van and in the process dropped him when they negligently failed to secure the wheel chair. *See* Attachment F: Edward Nishnic Declaration. This is the reality of the treatment of "prisoners" even in the United States. The Court should focus on what actually happens in custodial situations, not on what is "supposed" to happen as the government contends.

4. Mr. Demjanjuk's treatment in Germany

The government has submitted a statement from the German Embassy in Washington, D.C. concerning the treatment Mr. Demjanjuk is expected to receive in Germany (confinement in the medical facility of the Munich-Stadelheim prison) where, the German Embassy assures us, "preparations have already been made . . . to ensure that Mr. Demjanjuk receives appropriate medical care at all times." *See* 09-3416 Opposition Attachment H.<sup>10</sup>

As we have argued in our Motion for Stay and in this Reply, the issue is not what is supposed to happen, but our practical and real world experience of what does happen. For that we need only consult the actions of the United States authorities:

(i) ICE did not conduct a physical examination of Mr. Demjanjuk to determine his fitness to travel to Munich until Mr. Demjanjuk's April 1, 2009 request for an administrative stay on medical grounds.<sup>11</sup>

(ii) ICE intended to use a Gulfstream IV owned by the Federal Aviation Administration to transport Mr. Demjanjuk to Munich on April 5, notwithstanding the clear statement in the medical report of its own doctor that Mr. Demjanjuk

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<sup>10</sup> The German Embassy note would have been more persuasive had it been supported by a statement from the responsible prison person whose actual arrangements could be verified and tested by Mr. Demjanjuk's German lawyers.

<sup>11</sup> The government can hardly contend that it was unaware of the medical issues involved in transporting Mr. Demjanjuk. A simple reference to his age would have been enough. In fact, ICE agents attached a GPS ankle bracelet to Mr. Demjanjuk in early March and could clearly see his condition.



would need supportive oxygen and other palliative treatment during transportation not available on such an aircraft. 09-3416 Opposition at 6.<sup>12</sup>

(iii) ICE ignored the advice of its own doctor who examined Mr. Demjanjuk that he be transported in an ambulance, presumably manned by trained emergency medical technicians experienced in moving sick and injured patients. Instead ICE attempted to move him in a wheel chair, dropping him in the process when they failed to secure the wheelchair. Attachment F, Nishnic Declaration.

The government goes on to assure the Court that the German authorities will provide “appropriate medical care.” 09-3416 Opposition, Attachment H. Again, though, the issue is not what is supposed to happen, but what practical real world experience tells us does happen. Notwithstanding his age, his serious medical conditions, and need for weekly shots of Procrit, the United States government terminated Mr. Demjanjuk’s Medicare coverage several months ago. The government now wants this Court to believe that the German government will provide to Mr. Demjanjuk the “appropriate medical care” that the United States government specifically withdrew from him.

There is no evidence that the German authorities are any more competent or compassionate than the equivalent United States authorities, so the treatment afforded Mr. Demjanjuk by the United States authorities is a reasonable proxy for

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<sup>12</sup> Now under the watchful eye of the Court, the government has decided to lease an Air Ambulance for the transportation, an aircraft with “state of the art” equipment, with its own external defibrillator and oxygen, and a standard bed with pillows and linen. *See* Declaration of Marc J. Moore, 09-3416 Opposition Attachment A.

the treatment he can expect to receive in Germany. The treatment he has received from ICE has caused him extreme pain and suffering and ICE has exhibited a calculated indifference to the needs of a person in Mr. Demjanjuk's condition--taking necessary and appropriate measures to address his unique situation only when its failure to do so has been exposed in litigation. There is no evidence that the German authorities would perform at a higher standard. Contrary to the government's contention it is not Mr. Demjanjuk who's fear of torture is *subjective*, his concern is based on the real and objective conduct of United States' authorities and a realistic assumption that the German authorities will behave in a more or less similar manner. It is the government that is basing its argument on a naïve and subjective view that what is supposed to happen in Germany will in fact happen, notwithstanding the hard contrary evidence of the conduct of the United States' authorities.

The government repeatedly points to the provision of the regulation defining torture that makes clear that torture "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions including . . . other enforcement actions authorized by law." 8 CFR 1208.18. 09-3416 Opposition at 19. As we have repeatedly argued, however, the issue is not what is supposed to happen under German rules, but what will actually happen. Judging the likely behavior of the German authorities toward Mr. Demjanjuk by the behavior and conduct of the

United States authorities, they will exhibit a calculated indifference to the well being of a very old sick man unless pursued from minute to minute by lawyers and courts. They will willfully withdraw or withhold medical care on which his life depends for the purpose of punishing him. There is no basis in the record for believing that the German authorities will behave with greater concern and compassion than have the American. As a result, Mr. Demjanjuk will be subjected to extreme pain and suffering in Germany, intentionally inflicted by the authorities for the purpose of punishing him -- a classic definition of torture under the regulations.<sup>13</sup>

### **CONCLUSION**

The Court should stay the removal of John Demjanjuk pending review of the BIA decision. In the event the Court has any doubts regarding his medical condition, the Court should appoint its own expert to conduct a medical examination and report on the results to the Court.

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<sup>13</sup> The issues of German purpose and intent are addressed in the Stay Motion itself.

Respectfully submitted,

JOHN DEMJANJUK

By: s/John Broadley  
One of his attorneys

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Dated: April 28, 2009

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of April 2009, the foregoing JOHN DEMJANJUK'S REPLY TO GOVERNMENT'S OPPOSITION TO MOTION FOR STAY PENDING REVIEW was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s John Broadley  
John Broadley  
Attorney for John Demjanjuk

Dated: April 28, 2009

# **ATTACHMENT E**

**(Declaration of John Demjanjuk, Jr.  
with Attachments)**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

John Demjanjuk,

Petitioner,

No. 09-3469

Eric H. Holder, Attorney General of  
the United States,

Respondent.

## DECLARATION OF JOHN DEMJANJUK, JR.

1. I am John Demjanjuk, Jr, John Demjanjuk's son.

## Government Video No. 4

2. On April 14, 2009 I drove to Cincinnati to file John Demjanjuk's Petition for Review and Motion for a Stay in No. 09-3416. When I arrived back in Cleveland I went immediately to the Federal Building at 1240 East Ninth Street to assist my father in returning home after this Court issued a stay order.

3. Government Video No. 4 depicts the brief visit with my father where we spoke through a hole in the window. Immediately after, I met with Chuck Winner, ICE Supervisor, regarding his detention. Given the stay order, I requested ICE to transport my father back home providing him the same ICE security and medical care as they purportedly did on the transport to the ICE building. He was

to have a phone conference with superiors and let me know. Approximately 30 minutes later, he phoned and said we could take him home with our own transportation for which ICE would assist loading in a secure area. I decided to take him home rather than repeat my rejected demand for secure medical transportation and risk him remaining in the stress of detention overnight. ICE then moved him into the secure area by wheel chair as seen on Video 4. However, the video cuts off before we assisted him into my vehicle. While being assisted into the vehicle by me and an ICE agent he groaned in pain. Edward Nishnic was also present and accompanied us in the vehicle. It was a painful ride back to his home as my father groaned with each unavoidable bump in the road.

#### Other Government Videos

4. Other government videos depict my father's weekly visits to the doctor's office for treatment of his bone marrow disease. The office building door is very near the handicapped parking area and the elevator is immediately inside the door. It is a small building which requires a very short walk to get from the car to the elevator to the office. As clearly depicted in Gov't Video 5 (Gov't Exhibit 5), the most recent Video the Government provided dated April 20, 2009, his condition appears to be deteriorating as even the short distance to the building door caused him to lose balance and risk a fall. When my father is taken for treatment to other locations such as a hospital where the distance is considerably greater, he



requires the use of a wheel chair as was the case on his visit for an MRI at Parma Hospital on April 21, 2009 when he was accompanied by my sister Irene and for which ICE did not produce a surveillance video even though ICE was present to remove the ankle bracelet as required for an MRI.

#### MRI IMAGES

5. I have obtained from Dr. Steven Goliat a letter dated April 27, 2009 indicating my father has "severe lumbar spinal stenosis" with pain that can vary on a daily basis. This letter is based upon the recent MRI. A true and correct copy of that report is attached to this declaration.

6. I have obtained from Parma Hospital the Radiology Examination Report of Dr. Paul Klatte which is based upon the MRI examination of Mr. Demjanjuk on April 21, 2009. A true and correct copy of that report is attached to this declaration.

7. I have obtained from Parma Hospital the MRI images taken of Mr. Demjanjuk on April 21, 2009. True and correct copies of 3 side view images of the spine and 6 layer images in sequential order are attached to this declaration.

#### LAB REPORT

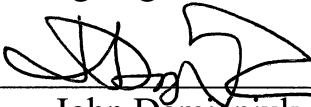
8. I have obtained from Dr. Steven Goliat a complete metabolic panel report dated April 19, 2009. The "Out of Range" column indicates WBC of 2.5 identified in bold as L (LOW), RBC of 3.2 identified as L (LOW), Hemoglobin of

11.1 identified as L (LOW and apparently contrary to Dr. Quinones' characterization of 11.7 as being "very good"), Hematocrit of 32.4 identified as L (LOW) as well as other tests also being out of "Reference Range". True and correct copy of the report is attached to this declaration.

**Declaration Pursuant to 28 USC 1746**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2009

  
\_\_\_\_\_  
John Demjanjuk, Jr.

INDEPENDENCE FAMILY PRACTICE CLINIC  
5672 RIDGE ROAD  
PARMA, OHIO 44129  
TELEPHONE 886-3150

STEVEN J. GOLIAT, D.O.  
VINCENT P. SUSTERSIC, D.O.

27 April 2009

To Whom It May Concern:

John Demjanjuk Sr. suffers from severe lumbar spinal stenosis as evidenced on the recent MRI. This is a narrowing of the spinal canal with compression of the exiting nerves.

He experiences low back pain with Right Lumbar Radiculopathy. His pain varies on a daily basis. He was prior on Ultram which was of no benefit. He recently was prescribed Percocet. In a younger person, we may try a nerve block, but due to his age it would not be recommended.

If I may be of any further assistance in this matter, please do not hesitate to contact me at the above address.

Sincerely,



Steven J. Goliat, D.O.  
SJG/lms

Name: DEMJANJUK, JOHN  
Phys: Goliat, Steven DO  
DOB: 04/03/1920 Age: 89 Sex: M  
Acct: V00124646795 Loc: MRI  
Exam Date: 04/21/2009 Status: REG REF  
Radiology No: 347052  
Unit No: [REDACTED]

EXAM#	TYPE/EXAM	RESULT
001667184	MRI/LUMBAR SPINE W/O CONTRAST	

PARMA COMMUNITY GENERAL HOSPITAL  
7007 POWERS BLVD.  
PARMA, OHIO 44129-5495  
AREA CODE (440) 743-3000

Name: DEMJANJUK, JOHN  
Unit No.: [REDACTED]  
Acct. No.: V00124646795  
Room No.: MRI  
Exam Date: 04/21/2009  
Ord. Phy.: Steven Goliat  
Birth Date: 19200403  
Pt. Type: REF  
X-Ray No.: 347052  
Rept Code: R  
Other Phy.:

#### RADIOLOGY EXAMINATION REPORT

001667184

REASON FOR EXAM: Lumbar radiculopathy.

MRI OF THE LUMBAR SPINE 04/21/09

Images according to protocol were obtained. There is desiccation of the discs throughout. There is mild anterior osteophytic lipping at the L1-2 level with mild hypertrophy of the posterior elements.

There is mild narrowing of the L2-3 disc interspace.

There is a moderate anterolisthesis at the L3-4 level measuring approximately 5.5 mm with mild narrowing of the disc interspace. There is also moderate hypertrophy of the posterior elements and these factors result in a severe canal stenosis. The neural foramina remain patent.

There is mild retrolisthesis at the L4-5 level with mild broad-based posterior disc bulge. There is also moderate hypertrophy of the posterior elements and these factors result in a mild to moderate canal stenosis. The neural foramina remain patent.

Name: DEMJANJUK, JOHN  
Phys: Goliat, Steven DO  
DOB: 04/03/1920 Age: 89 Sex: M  
Acct: V00124646795 Loc: MRI  
Exam Date: 04/21/2009 Status: REG REF  
Radiology No: 347052  
Unit No: M303365915

EXAM#	TYPE/EXAM	RESULT
001667184	MRI/LUMBAR SPINE W/O CONTRAST	

The L5-S1 level is unremarkable.

The bone marrow signal is unremarkable.

IMPRESSION:

Moderate degenerative changes as described, but most notably at the L3-L4 level with a severe canal stenosis.

rjt

\_\_\_\_\_  
Paul Klatte, M.D.  
As dictated by Paul Klatte, M.D.

D#: 1059309 C#: 850620

The physician noted as RELEASED BY may not be the physician who interpreted the films. This physician may only be releasing the report for printing according to hospital protocol.

DD: 04/22/2009 10:53:39 DT: 04/22/2009 13:11:21

\*\*\* REPORT SIGNED IN OTHER VENDOR SYSTEM \*\*\*  
Reported By: Paul A. Klatte, M.D.

1.5T MRC14432

Sr

PARMA HOSPITAL

Ex: MRI-LUMB-SPW0

DEM JIAN JUNK IDNN

T1SAGFS

1920 Apr 03 11:30:36.5515

Se: 5/10

Acc: 001667184

Im: 8/17

2009 Apr 21

Sag: L19.1(COI)

AcqTm: 18:16:14.772504

256 x 192

Ar

Pr

ET: 3

TR: 400.0

TE: 11.0

4.0thk/1.4rp

Id: DCM/Lin: DCM/Id: ID

W: 449 L: 185

Ir

DFOV: 27.0 x 27.0 cm

1.5T MRC14432

Sr

PARMA HOSPITAL

Ex: MRI-LUMB-SPW0

DEM JIAN JUNK IDNN

T1SAGFS

1920 Hpr 03 M M303365515

Se: 5/10

Acc: 001667184

Im: 9/17

2009 Apr 21

Seq: L24.5 (COI)

Acq Tm: 18:17:51.199983

256 x 192

Ar

Pr

ET: 3

TR: 400.0

TE: 11.0

4.0thk/1.4rp

Id: DCM / Lin: DCM / Id: ID

W: 449 L: 185

Ir

DFOV: 27.0 x 27.0 cm

1.5T MRC14432

Sr

PARMA HOSPITAL

Ex: MRI-LUMB SPWO

DEM JIAN JUNK IDNN

T1SAGFS

1920 Hpr 03 M M303365515

Se: 5/10

Acc: 001667184

Im: 10/17

2009 Apr 21

Sag: L29.9 (COI)

AcqTm: 18:14:38.037483

256 x 192

Ar

Pr

ET: 3

TR: 400.0

TE: 11.0

4.0thk/1.4rp

Id: DCM / Lin: DCM / Id: ID

W: 449 L: 185

Ir

DFOV: 27.0 x 27.0 cm



1.5T MRC14432

A

PARMA HOSPITAL

Ex: MRI-LUMB-SPW0

DEM JIAN JUNK JOHN

T2 Axial

1920 Apr 03 11:13:55.515

Se: 6/10

Acc: 001667184

Im: 26/46

2009 Apr 21

Acq: 13.1 (G01)

Acq Tm: 18:22:10.465002

256 x 192

R

L

ET: ID

TR: 5719.9

TE: 37.0

4.0thk/1.4sp

Id: DCM / Lin: DCM / Id: ID

W: 1065 L: 473

P

DFOV: 20.0 x 20.0 cm

1.5T MRC14432

A

PARMA HOSPITAL

Ex: MRI-LUMB-SPW0

DEM JIAN JIN, JOHN

T2 Axial

Se: 6710

Im: 27/46

Ac: 18.5 (COL)

1920 Apr 03 11:13:03.65515

Acc: 001667184

2009 Apr 21

AcqTm: 18:19:30.334992

256 x 192

R

L

ET: 15

TR: 5719.9

TE: 35.0

4.0thk/1.4ap

Id: DCM/Lin: DCM/Id: ID

W: 1065 L: 473

P

DFOV: 20.0 x 20.0 cm

1.5T MRC14432

A

PARMA HOSPITAL

Ex: MRI-LUMB-SPW0

DEM JIAN JIN, JOHN

T2 Axial

1920 Apr 03 PM 1303365915

Se: 6/10

Acc: 001667184

Im: 28/46

2009 Apr 21

As: 113.9 (COI)

Acq Tm: 18:22:10.217488

256 x 192

R

L

ET: IS

TR: 5719.9

TE: 65.0

4.0thk/1.4rp

Id: DCM / Lin: DCM / Id: ID

W: 1065 L: 473

P

DFOV: 20.0 x 20.0 cm

1.5T MRC14432

A

PARMA HOSPITAL

Ex: MRI-LUMB-SPW0

DEM JAM JUK JOHN

T2 Axial

Se: 6/10

Im: 29/46

Ac: 119.3 (G01)

1920 Apr 03 PM 1305365515

Acc: 001667184

2009 Apr 21

Acq Tm: 18:19:30.087518

256 x 192

R

L

ET: 15

TR: 5719.9

TE: 5.0

4.0thk/1.4rp

Id: DCM/Lin: DCM/Id: ID

W: 1065 L: 473

P

DFOV: 20.0 x 20.0 cm

1.5T MRC14432

A

PARMA HOSPITAL

Ex: MRI-LUMB-SPW0

DEM JIAN JIN, JOHN

T2 Axial

Se: 6/10

Im: 30/46

As: 124.7 (COI)

1920 Apr 03 11:13:56.515

Acc: 001667184

2009 Apr 21

AcqTm: 18:22:09.967520

256 x 192

R

L

ET: 15

TR: 5719.9

TE: 85.0

4.0thk/1.4rp

Id: DCM/Lin: DCM/Id: ID

W: 1065 L: 473

P

DFOV: 20.0 x 20.0 cm

1.5T MRC14432

A

PARMA HOSPITAL

Ex: MRI-LUMB-SPW0

DEM JAM JUK JOHN

T2 Axial

1920 Apr 03 11:13:55.515

Se: 6710

Acc: 001667184

Im: 31/46

2009 Apr 21

As: 130.1 (COI)

Acq Tm: 18:19:29.837509

256 x 192

R

L

ET: 15

TR: 5719.9

TE: 85.0

4.0thk/1.4rp

Id: DCM / Lin: DCM / Id: ID

W: 1065 L: 473

P

DFOV: 20.0 x 20.0 cm



## QuestL Diagnostics

Quest on Demand™

QUEST DIAGNOSTICS INCORPORATED  
CLIENT SERV CG 412.920.7700

SPECIMEN INFORMATION  
SPECIMEN: AT523842X  
REQUISITION: 0006522  
LAB REF NO: 1286300006522

COLLECTED: 04/18/2009 12:57  
RECEIVED: 04/18/2009 21:57  
REPORTED: 04/19/2009 09:42

### PATENT INFORMATION

DEMJEANJUK, JOHN

DOB: 04/03/1920      Age: 89  
GENDER: M

ID: 04031920

REPORT STATUS **Final**

ORDERING PHYSICIAN

**GOLIAT, STEVEN**

### CLIENT INFORMATION

328630

INDEPENDENCE FAMILY PRACTICE

13111-21 NG-1

6571 SEASVILLE ROAD

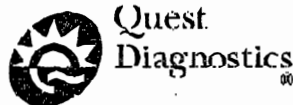
INDEPENDENCE, OH 44131

Test Name	In Range	Out of Range	Reference Range	Lab
<b>COMP METABOLIC PANEL W/EGFR</b>				
SODIUM	140		135-145 MMOL/L	
POTASSIUM	4.0		3.5-5.3 MMOL/L	
CHLORIDE	110		98-110 MMOL/L	
CARBON DIOXIDE	21		21-33 MMOL/L	
CALCIUM	8.6		8.6-10.2 MG/DL	
ALKALINE PHOSPHATASE	45		40-115 U/L	
AST	13		10-35 U/L	
ALT	17		9-60 U/L	
BILIRUBIN, TOTAL	1.0		0.2-1.2 MG/DL	
GLUCOSE		100 H	65-99 MG/DL	
GLUCOSE REFERENCE RANGE BASED ON FASTING SPECIMEN.				
UREA NITROGEN		33 H	7-25 MG/DL	
CREATININE		1.89 H	0.67-1.34 MG/DT	
BUN/CREATININE RATIO	17.6		6-22	
PROTEIN, TOTAL	6.6		6.2-8.3 G/DL	
ALBUMIN	4.2		3.6-5.1 G/DL	
GLOBULIN, CALCULATED	2.4		2.1-3.7 G/DL	
A/G RATIO	1.8		1.0-2.1	
EGFR NON-AFR. AMERICAN		34 L	> CR = 60 ML/MIN/1.73M2	
EGFR AFRICAN AMERICAN		41 L	> CR = 60 ML/MIN/1.73M2	
<b>CBC W/ DIFF and PLT</b>				
WBC		2.5 L	3.8-10.8 THOUS/MCL	
RBC		3.20 L	4.20-5.90 MILL/MCL	
HEMOGLOBIN		11.1 L	12.2-17.1 G/DL	
HEMATOCRIT		32.4 L	38-50.0 %	
MCV		101.1 H	80.0-100.0 FL	
MCH		34.5 H	27.0-33.0 PG	
MCHC	34.1		32.0-36.0 G/DL	
RDW		15.4 H	11.0-15.0 %	
PLATELET COUNT	262		140-400 THOUS/MCL	
PLATELET SUFFICIENCY	NORMAL		NORMAL	
NEUTROPHILS, ABSOLUTE	1570		1500-7800 CELLS/MCL	
LYMPHOCYTES, ABSOLUTE		550 L	850-3900 CELLS/MCL	
MONOCYTES, ABSOLUTE	300		200-950 CELLS/MCL	
EOSINOPHILS, ABSOLUTE	20		15-500 CELLS/MCL	
BASOPHILS, ABSOLUTE	10		0-200 CELLS/MCL	
TOTAL NEUTROPHILS, %	64		38-80 %	
TOTAL LYMPHOCYTES, %	23		15-49 %	
MONOCYTES, %	12		0-13 %	
EOSINOPHILS, %	1		0-8 %	
BASOPHILS, %	0		0-2 %	
RBC MORPHOLOGY	NORMAL			

DEMJANJUK, JOIN - AT523842X

Page - - Continued on Page 2

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Quest on Demand™

 PATIENT INFORMATION  
**DEMJEANJUK, JOHN**

 REPORT STATUS **Final**

QUEST DIAGNOSTICS CORPORATION

ORDER NO. PHYSICIAN

DOB: 04/03/1920 Age: 89

**GOLIAT, STEVEN**

GENDER: M

ID: 04031920

REPORTED: 04/19/2009 08:42

COLLECTED: 04/18/2009 12:57

Test Name	In Range	Out of Range	Reference Range	Lab
AMYLASE, SERUM	25		21-101 U/L	P
PSA, TOTAL	0.6		0.0-4.0 NG/ML	F

PSA VALUES FROM DIFFERENT ASSAY METHODS CANNOT BE USED INTERCHANGEABLY. THIS ASSAY WAS PERFORMED USING THE BAYER CHEMILUMINESCENCE METHOD.

SERUM PSA LEVELS SHOULD NOT BE INTERPRETED AS ABSOLUTE EVIDENCE OF THE PRESENCE OR ABSENCE OF DISEASE.

## URINALYSIS, COMPLETE

BILIRUBIN	NEGATIVE	NEGATIVE
KETONES	NEGATIVE	NEGATIVE
GLUCOSE, QUAL	NEGATIVE	NEGATIVE
PROTEIN, TOTAL, QUAL	NEGATIVE	NEGATIVE
HEMOGLOBIN, QUAL	NEGATIVE	NEGATIVE
PH	5.5	5.0-8.0
NITR. TR	NEGATIVE	NEGATIVE
LEUKOCYTE ESTERASE	NEGATIVE	NEGATIVE
COLOR	YELLOW	YELLOW
APPEARANCE	CLEAR	CLEAR
SPECIFIC GRAVITY	1.014	1.001-1.035
HYALINE CASTS	NONE SEEN	NONE SEEN LPF
RBC/HPF CELLS	NONE SEEN	0-3
WBC/HPF CELLS	NONE SEEN	0-5
BACTERIA	NONE SEEN	NONE SEEN
SQUAMOUS EP. CELLS	NONE SEEN	0-5 HPF

P

## Performing Laboratory Information:

P QUEST DIAGNOSTICS 975 GREENSBORO ROAD &amp; PARKWAY CENTER WILMINGTON, DE 19801

DEMJEANJUK, JOHN - AT522842X

Page 2 End of Report

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# **ATTACHMENT F**

**(Declaration of Edward Nishnic)**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**John Demjanjuk,**

**Petitioner,**

**Eric H. Holder, Attorney General of  
the United States,**

**Respondent.**

No. 09-3469

## DECLARATION OF EDWARD NISHNIC

1. I am Edward Nishnic, John Demjanjuk's former son in law. .
2. On April 14, 2009 I was present at the Demjanjuk house in Seven Hills, Ohio when ICE agents took John Demjanjuk into custody and took him to the Federal Building on East Ninth Street in Cleveland. The events that took place in the house are recorded on Video No. 2 submitted to the Court with Mr. Demjanjuk's Motion for a Stay Pending Review.
3. When it appeared ICE was going to attempt to transport Mr. Demjanjuk with a wheel chair and handicap van, I demanded of Chuck Winner, ICE Supervisor and ICE Dr. Carlos Quinones that they provide a stretcher and ambulance as Mr. Demjanjuk was in no condition to be moved by a wheelchair. While Dr. Quinones remained silent, Chuck Winner informed me of their

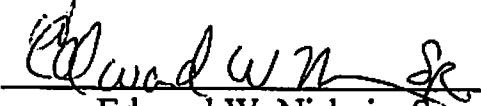
determination that Mr. Demjanjuk could be moved by a wheelchair and van given that a flight nurse and doctor were present. Chuck Winner further advised me that he had an arrest warrant and that I could not block the removal demanding an ambulance.

4. While attempting to take Mr. Demjanjuk from his bed and put him into a wheel chair, ICE agents lost control of Mr. Demjanjuk. As they attempted to set him down, the chair moved freely backwards, his lower body went towards the floor and he ended with the back of his head resting on the wheel chair's seat edge. Mr. Demjanjuk let out a loud cry in pain and then I heard an ICE agent say, "I don't think those things were locked." I understood him to mean the wheels on the wheel chair were not locked as I saw the wheelchair move freely backwards as they attempted to sit him down even though there was an ICE agent standing directly behind the chair. I was standing immediately behind and right of the chair. Mr. Demjanjuk is clearly seen going down and being picked up and set into the chair at 2:40 of Video No. 2. The Doctor present in the room did not provide any assistance or examination immediately following the incident. They immediately proceeded to wheel him down the hall as he cried loudly in pain.

**Declaration Pursuant to 28 USC 1746**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2009

  
Edward W. Nishnic, Sr.

# **ATTACHMENT G**

**(Declaration of Irene Nishnic)**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**John Demjanjuk,**

**Petitioner,**

**Eric H. Holder, Attorney General of  
the United States,**

**Respondent.**

No. 09-3469

## DECLARATION OF IRENE NISHNIC

1. I am Irene Nishnic, John Demjanjuk's daughter.
2. On April 13, 2009, I took John Demjanjuk to get his weekly Procrit shot at his Doctor's medical office. The Government's Video No. 3 shows part of that visit. Video No. 3 does not show how my father exited the vehicle. It is my recollection that on that day as with every other time I have transported my father in the recent past, he has always required my assistance to help him stand up. Further, as can be seen on the video, when he returned to the vehicle he required my assistance to lift his foot into the vehicle for him.
3. On April 21, 2009, I took my father to Parma Hospital for an MRI. On that day, he required the use of a wheel chair as the distance would

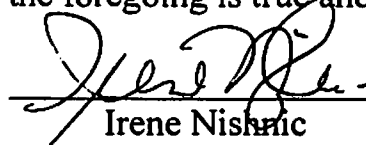
have been too great for him to try and walk, even with assistance. Before and after his MRI, he required my assistance to get dressed. I also assisted the medical technicians in helping him get onto and off of the examination table as he was unable to do these things unassisted. He was then returned to the vehicle by wheelchair. ICE was present at Parma Hospital as they were required to remove his ankle bracelet for the MRI.

4. On April 22, 2009 I returned to Parma Hospital with my father for additional tests. Once again, he required the assistance of a wheel chair to enter and exit the facility. ICE was not required to be there on this date as the ankle bracelet was not required to be removed.

**Declaration Pursuant to 28 USC 1746**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2009

  
Irene Nishnic

## **ATTACHMENT H**

**(E-mail: Eli Rosenbaum 4/27/09 E-Mail to  
John Broadley re Laboratory Test Results)**



**John Broadley**

---

**From:** Rosenbaum, Eli [Eli.Rosenbaum@usdoj.gov]  
**Sent:** Monday, April 27, 2009 1:45 PM  
**To:** John Broadley; Thomson, Robert  
**Cc:** John D; Michael E. Tigar  
**Subject:** RE: The medical report - please remember it is filed under seal by court order.

John:

My colleagues and I have discussed the request set forth in your Sunday night e-mail, in which you incorrectly asserted that the 6th Circuit ordered the government to "produce" lab test results and in which you demanded to be informed why we have not filed those results with the court or provided them to you. You previously insinuated to the BIA and the 6th Circuit that the report of the government's physician, clearing John Demjanjuk to make the flight to Germany, would show that, in fact, he was not medically fit to make that flight. The 6th Circuit granted your request and ordered that we produce "the report of the doctor which forms the basis for its conclusion that the petitioner's medical condition is such that he is stable enough to travel safely." Pursuant to that order, we produced Dr. Quinones' report. As you and the court can see, it does the very opposite of what you contended. We did not file the lab test report because we complied in full with the court's order by filing the doctor's report. That report remains under seal, per your insistence.

Our position, as has been repeatedly set forth in our briefs, is that all of this material and all the facts about your client's health are irrelevant to adjudication of your motion to reopen, because they cannot possibly support a conclusion that John Demjanjuk faces conditions in the Federal Republic of Germany that would constitute "torture" as defined by the Convention Against Torture. For what legitimate purpose do you ask us for a discretionary release of lab test results?

Eli Rosenbaum

---

**From:** John Broadley [mailto:jbroadley@verizon.net]  
**Sent:** Sunday, April 26, 2009 7:04 PM  
**To:** Thomson, Robert; Rosenbaum, Eli  
**Cc:** 'John D'; 'Michael E. Tigar'  
**Subject:** RE: The medical report - please remember it is filed under seal by court order.

Bob:

I have reviewed the document you sent me and have some questions.

First: The document you sent me did not include the lab test results from the medical examination. The text of the medical report includes a hemoglobin count, so I assume you do have the lab test results. Please confirm.

Second: Please let me know if you filed the lab test results with the Sixth Circuit and did not serve them on me and if so why not.

Third: If you did not file the lab test results with the Sixth Circuit, please tell me why you did not do so.

I don't want to get into an unnecessary dispute on this matter before the court, but the government did conduct lab tests on Mr. Demjanjuk and I think the Sixth Circuit asked that

these be produced. I certainly think the defense needs them. Please respond to this e-mail as quickly as possible.

John Broadley

John Broadley  
John H. Broadley & Associates, P.C.  
1054 31st Street, NW Suite 200  
Washington, D.C. 20007  
Tel. 202-333-6025  
Fax 301-942-0676  
Mobile 202-230-8395  
E-mail [jbroadley@alum.mit.edu](mailto:jbroadley@alum.mit.edu)

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**From:** Thomson, Robert [mailto:Robert.Thomson@usdoj.gov]  
**Sent:** Friday, April 24, 2009 10:09 AM  
**To:** Jbroadley@alum.mit.edu  
**Subject:** The medical report - please remember it is filed under seal by court order.

Robert G. Thomson  
Deputy Director  
Office of Special Investigations  
US Department of Justice  
1301 New York Ave. NW  
Washington, DC 20530  
202-353-0027